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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	Docket No. CWA-07-2002-0185
)	
APAC Missouri, Inc.)	CONSENT AGREEMENT AND
Columbia, Missouri)	FINAL ORDER
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII (EPA) and APAC Missouri, Inc., (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (hereinafter "CWA"), 33 U.S.C. § 1321(b)(6), as amended by the Oil Pollution Act of 1990, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation or Suspension of Permits 40 C.F.R. Part 22.
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 311(b) and (j) of the CWA, 33 U.S.C. § 1321(b) and (j), and regulations promulgated thereunder and codified at 40 C.F.R. Parts 110 and 112, governing the discharge of oil and requirements to prevent the discharge of oil.

Parties

3. The Complainant, by delegation from the Administrator of the EPA , and the Region Administrator, EPA, Region 7, is the Director of the Water, Wetlands, and Pesticides Division.
4. The Respondent is APAC Missouri, Inc., a company that does paving and road/bridge construction as well as aggregate and asphalt production. Respondent is incorporated in Delaware and registered to do business in the State of Missouri, and is headquartered at 900 Ashwood Parkway, Suite 700, Atlanta, Georgia.

Statutory and Regulatory Requirements

5. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and the regulations set forth in 40 C.F.R. Part 110, prohibit the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare of the United States.
6. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.
7. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides in part that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities to contain such discharges."
8. To implement Section 311(j), 33 U.S.C. § 1321(j), EPA promulgated regulations to prevent oil pollution. The regulations are codified at 40 C.F.R. Part 112. Part 112 sets forth the requirements for the preparation and implementation of Spill Prevention Control and Countermeasure Plans (SPCC Plans).
9. Under the authority of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), 40 C.F.R. Part 112, establishes procedures, methods and equipment and other requirements for equipment to prevent the discharge of oil from non-transportation-related onshore facilities into or upon the navigable waters of the United States or adjoining shorelines.
10. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing,

refining, transferring, distributing or consuming oil or oil products.

11. Under 40 C.F.R. Part 112 owners or operators of onshore facilities that have a storage capacity that is not buried of more than 1,320 gallons of oil, and due to their location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, must prepare a Spill Prevention Control and Countermeasure Plan (SPCC Plan) in writing and in accordance with 40 C.F.R. § 112.7.

Alleged Violations

12. Respondent is a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. Respondent was at all relevant times the "owner or operator" within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2 of the paving, road and bridge construction and aggregate and asphalt production company.

14. Respondent's tanker facility is an "onshore facility" within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

15. Respondent's tanker facility is a "non-transportation-related facility" as defined by Appendix A to 40 C.F.R. Part 112.

16. Respondent's tanker facility was engaged in the storage of asphalt emulsion, which is oil as defined by Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.

17. Due to its location, Respondent's tanker facility could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines.

18. Respondent's tanker facility has a storage capacity which is not buried of 1,320 gallons or more of oil.

19. On or about September 11, 2001, Respondent discharged SS-1, Anionic Asphalt Emulsion oil into an unnamed tributary of Birch Creek, a tributary of the Bourbeuse River, in such quantities as may be harmful pursuant to 40 C.F.R. § 110.3.

20. The Unnamed tributary, Birch Creek and the Bourbeuse River are navigable waters of the United States as defined by 40 C.F.R. § 110.1.

21. SS-1, Anionic Asphalt Emulsion is a form of oil as defined by Section 311(a)(1) of the CWA.

22. Respondent's September 11, 2001, discharge of asphalt emulsion from its tanker facility caused a film or sheen upon the surface of the unnamed tributary of Birch Creek, a tributary of the Bourbeuse River, or upon adjoining shorelines, or caused a sludge or emulsion to be deposited beneath the surface or upon its adjoining shorelines.

23. Respondent's September 11, 2001, discharge were of such quantity that has been determined may be harmful to the public health or the welfare of the United States pursuant to Sections 311(b)(3) and (b)(4) of the CWA and 40 C.F.R. § 110.3 and therefore Respondent violated Section 311 of the CWA, 33 U.S.C. § 1321.

24. Based upon the facts stated above, Respondent was required by Section 311(j) of the CWA, 33 U.S.C. § 1321(j) and 40 C.F.R. Part 112, to prepare an SPCC Plan in writing and in accordance with 40 C.F.R. § 112.7.

25. Respondent failed to prepare an SPCC Plan in writing and in accordance with 40 C.F.R. § 112.7.

26. Respondent's failure to prepare an SPCC Plan is a violation of the requirements of 40 C.F.R. Part 112 and Section 311(j), 33 U.S.C. § 1321(j).

27. Pursuant to Section 311(b)(6)(B)(I) of the CWA and the facts stated in paragraphs 12 through 26 above, it is proposed that a civil penalty of \$62,000 be assessed against the Respondent.

CONSENT AGREEMENT

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.
2. Respondent neither admits nor denies the factual allegations set forth above.
3. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above.
4. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth below.
6. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 27 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.
7. Respondent agrees to pay a civil administrative penalty of Sixty Two Thousand Dollars (\$62,000) within thirty days of entry of this Consent Agreement and Final Order.

FINAL ORDER

Pursuant to the provisions of Section 311 of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1321, as amended by the Oil Pollution Act of 1990, and based upon the information set forth in the Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of Sixty Two Thousand Dollars (\$62,000) within thirty (30) days of the entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "Oil Spill Liability Trust Fund" and sent to:

Kathy Robinson
Regional Hearing Clerk
901 N. 5th Street
Kansas City, Kansas, 66101

Please include the Docket number on the front of the check.

2. A copy of the check should be sent to:

Kristina Kemp
EPA-Region VII
Office of Regional Counsel
901 North Fifth Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By 

Leo Alderman

Director

Water, Wetlands, and Pesticides Branch

Date

7/24/02

RESPONDENT:
APAC Missouri, Inc.

Signature Donald G. Mantle
Printed DONALD G. MANTLE
Title VICE-PRES.
Date 7-9-02

IT IS SO ORDERED. This Final Order shall become effective
immediately.

Robert Patrick
Robert Patrick
Regional Judicial Officer
Date July 29, 2002

IN THE MATTER OF APAC Missouri, Inc., Respondent
Docket No. CWA-07-2002-0185

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kristina Kemp
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Debbie Murphy
APAC Missouri, Inc.
900 Ashwood Parkway
Suite 700
Atlanta, Georgia 30338

Dated: 7/29/02



Kathy Robinson
Regional Hearing Clerk